

**STANDARD FORM OF CONTRACT BETWEEN OWNER AND CONTRACTOR  
FOR LIMITED CONSTRUCTION WORK  
DEQ REMEDIATION DIVISION  
DEQ AGENCY CONTRACT NO. 412007**

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This CONTRACT is between the CONTRACTOR (as stated herein below) and the STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY ("DEQ").

WITNESSETH, that Contractor and DEQ for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK. Contractor shall perform the following work procured by Informal Solicitation and described as follows:

This Work is to enhance revegetation of the floodplain after remedial construction in completed areas of Subarea 4, Streamside Tailings Operable Unit ("SSTOU") along Silver Bow Creek near Opportunity, MT. Contractor will supply approximately 20,000 cubic yards of compost. (The actual quantity of compost required by DEQ may vary, depending on percent organic matter, percent moisture, etc. per cubic yard to achieve successful re-vegetation.) Work will consist of loading, hauling, and unloading compost to several areas designated by DEQ near Opportunity, Montana.

This Contract consists of the Invitation for Bid (IFB No. 412007), the Standard Form of Contract for Limited Construction Work, and Contractor's submitted Bid Form.

ARTICLE 2. TIME OF COMPLETION. The Work to be performed shall commence on the Effective Date of this Contract, which shall be the latter of the two dates of signature. The work is to be completed by June 15, 2012.

ARTICLE 3. THE CONTRACT SUM. DEQ shall pay Contractor the unit price bid per cubic yard for the actual number of cubic yards of acceptable compost delivered (subject to additions and deductions by Change Order). Measurements will be made by DEQ. The unit price bid shall include mobilization and demobilization costs (including costs of insurance), loading, hauling, delivery, and any miscellaneous costs incidental to the work. **Owner or their designated agent may sample delivered compost and have a laboratory analysis conducted for maturity. Immature compost will be removed and replaced with mature compost at contractor's expense. Compost analysis required for this bid should be representative of compost delivered.**

All costs in connection with the work, including, but not limited to, the furnishing of materials, equipment, tools, supplies, and providing all necessary labor and supervision to fully complete the work, shall be included in the unit price bid. No item that is required for the proper and successful completion of the work will be paid for outside or in addition to the unit price bid.

ARTICLE 4. PROGRESS PAYMENTS. Payment to be made upon number of cubic yards of compost delivered based upon the unit price stated in Article 3.

ARTICLE 5. FINAL PAYMENT. Final payment shall be paid by DEQ to Contractor in accordance with the time periods specified by state law, when: 1) the work has been completed to DEQ's satisfaction; 2) the Contract is fully performed, and 3) DEQ has verified the actual number of cubic yards of acceptable compost delivered.

ARTICLE 6. JURISDICTION AND VENUE. The laws of Montana govern this Contract. The parties agree that any litigation concerning this Contract, unless the parties agree to arbitration or mediation, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and the parties consent to personal jurisdiction, subject matter jurisdiction and venue in that court. Each party shall pay its own costs and attorney fees.

ARTICLE 7. MISCELLANEOUS.

1. Taxes/Permits/Fees. Contractor shall secure and pay for all permits and inspections, give all notices, pay all taxes and fees and comply with all laws, ordinances, rules, regulations and lawful orders bearing on the performance of the work.

2. Labor/Materials/Equipment. Unless otherwise specified, Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction and services for the proper execution and completion of the work. Unless otherwise specified, all material and equipment provided shall be new and in good condition. All workmanship shall be of good quality and in keeping with the standard of the respective trades.

3. Indemnification and Insurance. Contractor shall maintain for the duration of the contract, at its cost and expense, insurance at the limits and types required by DEQ for this Contract, against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, its agents, employees, representatives, assigns, or subcontractors.

a. Hold Harmless and Indemnification: Contractor agrees to protect, defend, and save the state, its elected and appointed officials, agents, and employees harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense

thereof, on account of bodily or personal injuries, death, or damage to property arising out of services or work performed or omissions or work or in any way resulting from the acts, negligent or otherwise, or omissions of Contractor, its agents, employees, assigns, and/or subcontractors under this Contract.

b. Contractor's Insurance: **Insurance required under all sections herein shall be in effect for the duration of the contract.** Insurance required herein shall be provided by insurance policies issued only by companies currently authorized to do business in the state of Montana. No Contractor or Subcontractor shall commence work under this Contract until all required insurance has been obtained and proof of insurance, in the form of certificates of insurance satisfactory to DEQ, have been delivered to DEQ.

c. Contractor shall carry **Workers' Compensation Insurance**, maintained at the limits required by statute. Such Workers' Compensation Insurance shall protect Contractor from claims made by his own employees, the employees of any Subcontractor, and also claims made by anyone directly or indirectly employed by Contractor or Subcontractor. Contractor shall require each Subcontractor similarly to provide Workers' Compensation Insurance.

d. Contractor shall carry occurrence coverage **Commercial General Liability Insurance** including coverage for premises, operations, independent contractor's protective, products and completed operations, broad form property damage, and comprehensive automobile liability insurance with not less than the following limits of liability: \$250,000 per occurrence; aggregate limit of \$500,000.

i. The Commercial General Liability Insurance shall provide coverage for both bodily injury, including accidental death and property damage which may arise out of the work under this Contract, or operations incidental thereto, whether such work and operations be by Contractor or by Subcontractor or by anyone directly or indirectly employed by Contractor or Subcontractor, or by anyone for whose acts any of them may be liable.

ii. Contractor's liability insurance policies shall list DEQ as an additional insured. Should Contractor not be able to list DEQ as an additional insured, Contractor shall purchase a per occurrence Owner's / Contractor's Protective Policy (OCP) with DEQ as the insured party in the same occurrence and aggregate limited as indicated above for the Contractor's Commercial General Liability Policy.

iii. Contractor's insurance coverage shall be PRIMARY insurance as respects DEQ, its officers, elected and appointed officials, employees and volunteers. Any insurance or self insurance maintained by the state, its officers, elected and appointed officials, employees and volunteers shall be excess of the Contractor's insurance and shall not be attributable to it.

e. The insurance required under this Contract shall not be cancelled or materially changed unless Contractor provides at least thirty (30) days prior written notice to DEQ.

4. Construction Contractor Registration. Contractor must register with the Department of Labor & Industry under 39-9-201 and 39-9-204, MCA, **PRIOR** to the Contract being executed by the State of Montana for all projects greater than \$2,500.00 and a copy of the registration certificate must be provided DEQ.

5. Gross Receipts Tax. In compliance with 15-50-206, MCA, Contractor will have 1% of his gross receipts withheld by DEQ from all payments due for Contracts over \$5,000. Each subcontractor who performs work greater than \$5,000 shall have 1% of its gross receipts withheld by Contractor. Contractor shall notify the Department of Revenue on the department's prescribed forms.

6. Equal Employment Opportunity. All hiring and other employment practices shall be non-discriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

7. Record Keeping. Payrolls and basic records pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst or his authorized representative at mutually convenient times. Contractor shall keep accounting records for a period of three years after completion and acceptance of the project by the Owner.

8. Montana Prevailing Wage Rate Requirements. Contractor must comply with the requirements for payment of wages set out in Title 18, Chapter 2, Part 4, MCA. The rates applicable to this project will generally be the rates specified for heavy and highway construction. Contractor agrees to pay required wage rates and comply with all other legal requirements for fringe benefits, hours and working conditions. The rates specified are minimum rates, and where the federal rate differs from the state rate, the higher of the two will be the required minimum. Bidder should, if uncertain of legal requirements or applicable rates for this project or certain categories of workers, seek clarification from the Montana Department of Labor and Industry. (phone 406-444-5600 / email <http://rad.dli.state.mt.us>).

If Contractor employs any person in a trade or occupation not classified in the wage determinations, such person shall be paid at not less than such rates as shall be determined by the Montana Department of Labor and Industry. Such approved minimum rate shall be retroactive to the time of the initial employment of such person in such trade or occupation. Contractor shall notify DEQ of its intention to employ persons in trades or occupations not classified in sufficient time to obtain approved rates for such trades or occupations.

Under 18-2-406, MCA, Contractor must post in a prominent and accessible location at the site, not later than the first day of work, a legible statement of all wages to be paid to employees employed at the site. Under 18-2-423, MCA, any employees receiving an hourly wage are to be paid on a weekly basis.

Under 18-2-422, MCA, Contractor must maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, for a period of not less than 3 years after the Contractor's completion of work on the project.

ARTICLE 9. MODIFICATIONS. This Contract may not be enlarged, modified, or altered except by a written modification (Change Order) signed by DEQ and Contractor and attached to the original of this Contract. No handwritten change, addition or erasure of any printed portion of this Contract shall be valid or binding upon either party.

ARTICLE 10. TERMINATION.

This Contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) calendar days' actual written notice of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

Upon termination for default, the parties shall have such rights and remedies as each would have against the other at law or in equity under the statutes, rules, and case law of the State of Montana. DEQ and Contractor agree that in the event either of them incurs any legal costs or attorneys' fees whatsoever, each party shall pay its own legal costs and attorneys' fees.

This Contract may be terminated in whole or in part in writing, by the DEQ for its convenience, provided that the Contractor is given: (1) not less than ten (10) calendar days' actual written notice of intent to terminate, and (2) an opportunity for consultation with DEQ prior to termination.

Upon termination for DEQ's convenience, Contractor shall be entitled to payment in accordance with this Contract for compost delivered by Contractor during the period prior to the effective date of termination. Partial payment on account of unit price work will be based on the number of units delivered.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement. The Agreement shall be effective only after signature of both parties and the effective date of this agreement shall be the later of the dates of signature.

CONTRACTOR:

OWNER:

STATE OF MONTANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY

\_\_\_\_\_  
Date

\_\_\_\_\_  
VICKI WOODROW  
Contracts Officer  
Financial Services  
Metcalf Building, Room 003  
1520 E. Sixth Avenue  
Helena, Montana 59620-0901  
\_\_\_\_\_  
Date

Taxpayer's I.D. No. \_\_\_\_\_

Approved for Legal Content:

Contractor's Registration Certificate No. \_\_\_\_\_

\_\_\_\_\_  
DEQ Legal Counsel

\_\_\_\_\_  
Date